

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SHIRLEY ANN CASH,

Plaintiff,

ORDER

22-CV-01766 (EK)

-against-

KILOLO KIJAKAZI, ACTING COMMISIONER
OF SOCIAL SECURITY,

Defendant.

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ERIC KOMITEE, United States District Judge:

On March 3, 2023, in connection with the Court's contemplation of a modest reduction of attorney's fees payable to Plaintiff's counsel under the Equal Access to Justice Act ("EAJA"), the Court directed Plaintiff's counsel to submit a statement explaining any unusual features or complexity of this case on or before March 17, 2023. On March 18, 2023, Plaintiff's counsel filed a letter in support of an award of \$8,319.61 in EAJA fees.

In Social Security disability cases, a district court may "conclude that excessive or inadequate billing warrants some reduction" in EAJA fees. *Vincent v. Comm'r of Soc. Sec.*, 651 F.3d 299, 308 (2d Cir. 2011). Given the record here, a ten percent reduction of EAJA fees — amounting to \$831.96, for a net award of \$7,487.65 — is appropriate. Plaintiff's counsel

expended nearly 32 attorney hours and more than 8 paralegal hours on this case – significantly more than the mean and median for recent fee applications to this Court – and yet the administrative record here, at 783 pages, was meaningfully shorter than average.

In her response to the Court's inquiry, Plaintiff identified no special complexities. Instead, she invoked the district courts' familiar pronouncement that in a typical Social Security case, "it is reasonable for an attorney to expend between twenty and forty hours." Pl.'s Resp. Ct.'s Order 2, ECF No. 21 (citing *Sava v. Comm'r of Soc. Sec.*, No. 06-CV-3386, 2014 WL 129053 (S.D.N.Y. Jan. 10, 2014)).¹ But that citation makes for an apples-to-oranges comparison here, given the early stage at which this case was resolved. Whereas in *Sava*, the plaintiff had "filed a motion for judgment on the pleadings, which Motion the Court granted," see *id.* at *1, Cash never filed a brief in this appeal, never appeared for oral argument, never filed objections to a magistrate judge's Report and Recommendation, or the like.² These factors stand in marked contrast with other

¹ Unless otherwise noted, when quoting judicial decisions this order accepts all alterations and omits all citations, footnotes, and internal quotation marks.

² Indeed, the docket in *Sava* indicates that counsel finalized and filed both an initial motion for judgment on the pleadings, together with a memorandum of law, and a reply brief. See Pl.'s Mot. J. Pleadings, *Sava*, 2014 WL 129053, ECF No. 13; Pl.'s Br. Supp. Mot. J. Pleadings, *id.*, ECF No. 14; Reply Mem. Law, *id.*, ECF No. 18. The parties also argued objections to

cases cited by Cash, as well. See, e.g., *Rivera v. Astrue*, 2009 WL 1351044, 07-CV-3129, at *1-2 (E.D.N.Y. May 13, 2009) (cutting request for \$9,485 in fees down to \$6,129, despite Plaintiff's having filed a brief).

And even if it could be said that "the hours billed in this case fall within the average range of hours expended on a common social security case," it would remain the case that those hours "do not reflect the quantity and quality of the work performed by counsel." *Berry v. Comm'r of Soc. Sec.*, No. 20-CV-2972 (PKC), 2022 WL 4661529, at *3 (E.D.N.Y. Sept. 30, 2022).

The Court is aware that Plaintiff's counsel has previously received a payment of \$8,319.61. See Letter, ECF

the magistrate judge's Report and Recommendation. See, e.g., Reply Br., *id.*, ECF No. 28. Still, the district court cut the Sava plaintiff's fee down from the \$15,546 requested to an actual award of \$10,883 – a thirty-percent reduction.

No. 22. Consistent with this order, Plaintiff's counsel shall remit \$831.96.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: April 17, 2023
Brooklyn, New York